UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
DOUGLAS MOLINA, SR., DOUGLAS MOLINA, JR.,

Plaintiffs,

-against-

CARDILLO POOLS & SPAS SERVICE CORP., LUIGI CASALE, KARINA CASALE, JUAN DENARO,

Defendants.
---X

COMPLAINT

JURY TRIAL DEMANDED

NATURE OF ACTION

1. Plaintiffs bring this action to recover unpaid wages, liquidated damages, reasonable attorney fees and costs from the Defendants, for whom the Plaintiffs performed work.

2. For a time prior to filing this Complaint, the Defendants have willfully committed violations of 29 U.S.C §201 et. seq., (the "Fair Labor Standards Act" or "FLSA") by failing to pay the Plaintiffs the rate of one-and-one-half times thier regular rate of pay for hours worked in excess of 40 hours in a workweek.

JURISDICTION AND VENUE

3. This action arises under the Fair Labor Standards Act 29 U.S.C §201 et. seq.

4. This Court has jurisdiction under 28 U.S.C. §1331 and 29 U.S.C. § 216. Plaintiffs further invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367.

5. Venue is proper in the Southern District of New York under 28 U.S.C. §1391 because the Defendants conduct business there and the cause of action arose there.

THE PARTIES

6. Plaintiff DOUGLAS MOLINA, SR.("Molina, Sr.") resides in Sleepy Hollow, New York.

7. Plaintiff DOUGLAS MOLINA, JR. ("MOLINA, JR.") resides in Sleepy Hollow, New York.

8. Upon information and belief, Defendant CARDILLO POOLS & SPAS SERVICE CORP. ("Corporate Defendant") is a corporation formed in the State of New York and is located at 128 Mount Joy Place, New Rochelle, N.Y, 10801.

9. Upon information and belief, Defendant LUIGI CASALE ("Luigi") is the owner of Corporate Defendant with his principal place of business located at Corporate Defendant, and is domiciled in the State of New York.

10. Upon information and belief, Defendant KARINA CASALE ("Karina") is the general manager of Corporate Defendant with her principal place of business located at Corporate

Defendant, and is domiciled in the State of New York.

11. Upon information and belief, Defendant JUAN DENARO ("Juan") is the general manager of Corporate Defendant with his principal place of business located at Corporate Defendant, and is domiciled in the State of New York.

BACKGROUND FACTS

12. Corporate Defendant is an "employer" under the Fair Labor Standards Act ("FLSA").

13. Upon information and belief, Corporate Defendant is owned, in whole or in part, by Luigi.

14. Upon information and belief, Corporate Defendant is owned, in whole or in part, by Karina.

15. Upon information and belief, Corporate Defendant is owned, in whole or in part, by Juan.

16. During any period of time whatsoever between January 1, 2015 through November 24, 2016, Corporate Defendant had the ability to perform one or more of the following actions: (1) hire certain employees of Corporate Defendant, (2) terminate the employment of certain employees of Corporate Defendant, (3) set the wage rates of certain employees of Corporate Defendant, (4) maintain payroll records for certain employees of Corporate Defendant, or (5) institute work rules for certain employees of Corporate Defendant.

17. During any period of time whatsoever between January 1, 2015 through November 24, 2016, Defendant Luigi had the ability to perform one or more of the following actions: (1) hire certain employees of Corporate Defendant, (2) terminate the employment of certain employees of Corporate Defendant, (3) set the wage rates of certain employees of Corporate Defendant, (4) maintain payroll records for certain employees of Corporate Defendant, or (5) institute work rules for certain employees of Corporate Defendant.

18. During any period of time whatsoever between January 1, 2015 through November 24, 2016, Defendant Karina had the ability to perform one or more of the following actions: (1) hire certain employees of Corporate Defendant, (2) terminate the employment of certain employees of Corporate Defendant, (3) set the wage rates of certain employees of Corporate Defendant, (4) maintain payroll records for certain employees of Corporate Defendant, or (5) institute work rules for certain employees of Corporate Defendant.

19. During any period of time whatsoever between January 1, 2015 through November 24, 2016, Defendant Juan had the ability to perform one or more of the following actions: (1) hire certain employees of Imperial, (2) terminate the employment of certain employees of Imperial, (3) set the wage rates of certain employees of Imperial, (4) maintain payroll records for certain employees of Imperial, or (5) institute work rules for certain employees of Imperial.

20. Corporate Defendant is involved in an industry affecting commerce within the meaning of the FLSA.

21. Corporate Defendant's annual revenues exceed $500,000 for the years 2016, 2015, and 2014.

22. The business activities of the Corporate Defendant is related and performed through unified operation or common control for a common business purpose and constitutes an enterprise within the meaning of the FLSA.

23. Corporate Defendant failed to keep accurate and sufficient payroll and time records, as required by law.

24. Corporate Defendant did not maintain sufficient payroll and time records to determine the weekly pay and hours worked by the Plaintiffs.

PLAINTIFF DOUGLAS MOLINA, SR.:

25. Plaintiff Molina, Sr. started working for Corporate Defendant in February 2015.

26. Plaintiff, Molina, Sr. performed work for Corporate Defendant during the 2016 calendar year.

27. Plaintiff Molina, Sr., performed work for Corporate Defendant during the 2015 calendar year.

28. Plaintiff Molina, Sr., individually engaged in interstate commerce within the meaning of the FLSA by regularly using the instrumentalities of interstate commerce to perform Plaintiff's work, which was directly essential to Corporate Defendant's business, including driving to, and performing services for, Corporate Defendant's customers located outside the state of New York.

29. Corporate Defendant paid Plaintiff Molina, Sr. by the hour.

30. Corporate Defendant paid Plaintiff Molina, Sr. by check.

31. Plaintiff Molina, Sr., regularly worked more than 40 hours in a workweek while employed by Corporate Defendant.

32. Corporate Defendant regularly did not pay Plaintiff Molina, Sr. an overtime premium for hours worked over 40 in a workweek.

33. Plaintiff Molina, Sr. was not exempt from the FLSA while working for Corporate Defendant.

34. Plaintiff Molina, Sr. was a covered employee within the meaning of the FLSA and NYLL while working for Corporate Defendant.

35. Defendants did not pay Plaintiff Molina, Sr. all wages owed.

PLAINTIFF DOUGLAS MOLINA, JR.:

36. Plaintiff MOLINA, JR. started working for Corporate Defendant starting in April, 2016.

37. Plaintiff, MOLINA, JR. performed work for Corporate Defendant during the 2016 calendar year.

38. Plaintiff MOLINA, JR., individually engaged in interstate commerce within the meaning of the FLSA by regularly using the instrumentalities of interstate commerce to perform Plaintiff's work, which was directly essential to Corporate Defendant's business, including driving to, and performing services for, Corporate Defendant's customers located outside the state of New York.

39. Corporate Defendant paid Plaintiff MOLINA, JR. by the hour.

40. Corporate Defendant paid Plaintiff MOLINA, JR. by check.

41. Plaintiff MOLINA, JR., regularly worked more than 40 hours in a workweek while employed by Corporate Defendant.

42. Corporate Defendant regularly did not pay Plaintiff MOLINA, JR. an overtime premium for hours worked over 40 in a workweek.

43. Plaintiff MOLINA, JR. was not exempt from the FLSA while working for Corporate Defendant.

44. Plaintiff MOLINA, JR. was a covered employee within the meaning of the FLSA and NYLL while working for Corporate Defendant.

45. Defendants did not pay Plaintiff Molina, Jr. all wages owed.

AS AND FOR A FIRST CAUSE OF ACTION
(Failure to pay overtime)
(Federal)

46. Plaintiffs repeat, re-allege & reincorporate all allegations as though fully set forth herein.

47. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect the Plaintiffs.

48. Defendants failed to pay Plaintiffs overtime wages to which Plaintiffs are entitled under the FLSA and the supporting Federal Regulations.

49. As a result of Defendants' unlawful acts, Plaintiffs have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to theFLSA.

50. Defendants' unlawful conduct, as described in this Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Complaint are unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs.

51. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

AS AND FOR A SECOND CAUSE OF ACTION
(Failure to pay overtime)
(NY STATE)

52. Plaintiffs repeat, re-allege & reincorporate all allegations as though fully set forth herein.

53. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants and protect the Plaintiffs.

54. Defendants failed to pay Plaintiffs overtime wages to which Plaintiffs are entitled under the NYLL and the supporting New York State Department of LaborRegulations.

55. By Defendants' knowing or intentional failure to pay Plaintiffs overtime wages for hours worked over 40 hours per workweek, they have willfully violated NYLL Art. 19, §§ 650 *et seq.,* and the supporting New York State Department of Labor Regulations.

56. Due to Defendants' violations of the NYLL, Plaintiffs are entitled to recover unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest from the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION
(Failure to provide wage notices)
(NY STATE)

57. Plaintiffs repeat, re-allege & reincorporate all allegations as though fully set forth herein.

58. Pursuant to the Wage Theft Prevention Act, New York Labor Law, §195, Defendants willfully failed to furnish Plaintiffs with a required notice containing the following information:

i. the rates or rates of pay and basis thereof,

ii. whether paid by the hour, shift, day, week, salary, piece, commission or other allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances;

iii. the regular pay designated by the employer in accordance with NYLL §191;

iv. the name of the employer;

v. Any "doing business as" names used by the employer;

vi. The physical address of the employer's main office or principal place of business, and a mailing address, if different;

vii. The telephone number of the employer.

59. Defendants willfully failed to furnish Plaintiffs with an accurate statement of wages as required by NYLL §195(3), containing the dates of work covered by that payment of wages; name of the employee; name of the employer; address and phone number of employer; rate or rates of pay and basis thereof; whether paid by hour, shift, day, week, salary, piece, commission, or other; gross wages; hour rate or rates of pay, and overtime rates of pay; the number of hours worked, including over time hours; deductions, allowances, and net wages.

60. Due to Defendants' violation of NYLL §195(1), Plaintiffs are entitled to recover from Defendants liquidated damages of $50 per workweek that the violation occurred, up to a maximum of $2,500, reasonable attorney fees, and costs and disbursements of this action, pursuant to NYLL § 198(1-b).

AS AND FOR A FOURTH CAUSE OF ACTION
(Failure to pay wages)
NY Lab. Law §191

61. Plaintiffs repeat, re-allege & reincorporate all allegations as though fully set forth herein.

62. Under NYLL §191, an employer is required to pay an employee within one week of the services performed by the employee.

63. Defendants failed to pay Plaintiffs their wages as required by NYLL §191 by not paying all wages owed within the statutory time period.

64. Because of Defendants unlawful withholding of wages, Plaintiffs suffered harm.

AS AND FOR A FIFTH CAUSE OF ACTION
(Breach of contract)

65. Plaintiffs repeat, re-allege & reincorporate all allegations as though fully set forth herein.

66. Plaintiffs and Defendant established a contract for services by and through an employer-employee relationship.

67. Plaintiffs rendered services to Defendants under this contract.

68. Defendants breached the contract by not paying plaintiff the money for their services.

69. By Defendants breach, Plaintiffs suffered harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

A. Unpaid overtime pay, and an additional and an equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

B. Unpaid wages pursuant to NYLL Art. 19, §§ 650 *et seq.,* and the supporting New York State Department of Labor regulations, and an additional and equal amount as liquidated damages pursuant to NYLL § 663;

C. Unpaid overtime pursuant to NYLL Art. 19, §§ 650 *et seq.,* and the supporting New York State Department of Labor regulations, and an additional and equal amount as liquidated damages pursuant to NYLL § 663

D. Statutory damages for Defendants' notice and recordkeeping violations pursuant to NYLL Art. 6, §§ 190 *et seq.;*

E. Pre-judgment interest and post-judgment interest;

F. Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under NYLL Art. 6, §§ 190 *et seq.,* NYLL Art. 19, §§ 650 *et seq.,* and the supporting New York State Department of Labor regulations;

G. An injunction requiring Defendants to pay all statutorily required wages pursuant to the NYLL and an order enjoining Defendants from continuing its unlawful policies and practices as described herein;

H. Reasonable attorney fees and costs of the action;

I. Such other relief as this Court shall deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Fed. R. Civ. P., Plaintiffs demand a trial by jury on all questions of fact raised by this Complaint.

Dated: White Plains, New York
November 24, 2016

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